

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL D. CLARKE,) CASE NO. C07-1558-JCC-MAT
Petitioner,)
v.)
KENNETH QUINN,) REPORT AND RECOMMENDATION
Respondent.)

Petitioner is a Washington state prisoner who has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, along with an application for leave to proceed *in forma pauperis*. The petition challenges petitioner’s conviction in state court for first degree murder and attempted first degree murder. (Proposed Petition at 1). The Court’s records reveal that petitioner previously filed another § 2254 petition challenging the same conviction in 2004. *See Clarke v. Spalding*, Case No. C04-2093-JCC-JPD. The Court dismissed the previous petition as barred by the statute of limitations. (Doc. #24 in Case No. C04-2093-JCC-JPD).

Thus, it appears that the current habeas petition is successive. The Court is without jurisdiction to consider such a petition until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28 U.S.C. § 2244(b)(3)(A); Circuit Rule 22-3. Petitioner has not provided any evidence that he has sought or received such permission from the Ninth Circuit. Accordingly, the current petition should be dismissed without prejudice and the application for leave to proceed *in*

01 *forma pauperis* may be denied as moot. A proposed Order accompanies this Report and
02 Recommendation.

03 DATED this 4th day of October, 2007.

04 
05 MARY ALICE THEILER
06 United States Magistrate Judge

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